

PT 97-50

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

DUCKS)		
UNLIMITED, INC.)	Docket Nos:	93-49-318
APPLICANT)		
)		
)		
v.)	Real Estate Exemptions	
)	for 1993 Tax Year	
)		
DEPARTMENT OF REVENUE)	P.I.N:	14-12-301-001
STATE OF ILLINOIS)		
)		
)	Alan I. Marcus,	
)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms Linda E. Spring of Wildman, Harrold, Allen & Dixon on behalf of Duck Unlimited, Inc; Mr. John Izzo of Scariano, Kula, Ellch and Himes on behalf of Freemont Elementary School District 79 and Stevenson High School District 125.

SYNOPSIS: This proceeding raises the limited issue of whether the above captioned real estate was "actually and exclusively used for charitable or beneficent purposes..." within the meaning of 35 **ILCS** 205/19.7.¹ In relevant part, that provision exempts the following from real estate taxation:

All property of institutions of public charity, all property of beneficent and charitable organizations,

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (35 **ILCS** 205/1 *et seq*).

whether incorporated in this or any other state of the United States ... when such property is actually and exclusively used for such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

The controversy arises as follows:

On November 6, 1980, the Department of Revenue (hereinafter the "Department") determined that Lake County Parcel Number 14-12-301-001 was exempt from 1980 real estate taxes under the then-existing version of Section 19.7. (Administrative Notice).

The property remained exempt for each ensuing tax year. However, on June 13, 1993, applicant informed the Lake County Supervisor of Assessments that the property was for sale. It also requested that its sale efforts not destroy the property's exempt status. (Applicant Ex. No. 21).

Applicant thereafter filed an exemption complaint with the Lake County Board of Review (hereinafter the "Board"). Said complaint was filed on December 13, 1993 and alleged that the subject parcel was exempt from 1993 real estate taxes under Section 205/19.7. (Dept. Ex. No. 1).

On January 10, 1994, counsel for Freemont Elementary School District 79 and Stevenson High School District 125 (hereinafter collectively referred to as the "Intervenors") filed an intervention petition with the Board of Review. (Dept. Group Ex. No. 3, Document B).

The Board subsequently reviewed applicant's complaint and recommended to the Department that the requested exemption be denied. (Dept. Group Ex. No. 1). On October 10, 1995, the Department adopted the Board's recommendation by issuing a certificate finding that the property was not in exempt use during 1993. (Dept. Ex. No. 2).

Applicant later filed a timely request for hearing as to the Department's denial. (Dept. Group Ex. No. 3, Doc. A). After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on October 2, 1996.

Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel not be exempt from 1993 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction in this matter and its position therein, namely that Lake County Parcel Number 14-12-301-001 (hereinafter the "subject parcel") was not in exempt use during 1993, is established by admission into evidence of Dept. Ex. Nos. 1 and 2.

2. The subject parcel is commonly known as One Waterfowl Way. It is located in Long Grove, Illinois and consists of a 10-acre parcel of real estate that is improved with a 1-story, 25,600 square foot building. Dept. Ex. No. 1.

3. Applicant acquired its ownership interest in the subject property via two warrantee deeds dated December 18, 1978. Applicant Ex. Nos. 11(A) and 11(B).

4. The building served as applicant's operational headquarters from December 18, 1978 until applicant vacated the premises on September 1, 1992. Applicant vacated the premises in order to relocate its corporate headquarters to Memphis, Tennessee in September of 1992. Dept. Ex. No. 1; Tr. pp. 17, 125.

5. On November 6, 1980, the Department determined that the subject parcel was exempt from 1980 real estate taxes under the then-existing version of 35 ILCS 205/19.7. Administrative Notice.

6. The property remained exempt for each ensuing tax year. However, on June 10, 1993, applicant provided the Lake County Supervisor of Assessments with written notice that it was selling the subject property but using the building "for storage purposes only." Applicant Ex. No. 21.

6. Stephanie Vermillion, the Deputy Assessor of Elia Township, (wherein the subject parcel is located), personally inspected the premises on three different occasions. Tr. pp. 11, 19, 26, 32.

7. The first inspection was in late December 1992, when Ms. Vermillion visited the premises with a co-worker. She tried to gain access

to the building by knocking on the door but there was no answer. Ms. Vermillion was nonetheless able to see through the windows and observed "[a]n empty building" with no equipment on the property. She also noticed that there were weeds "all over" the subject premises. Tr. pp. 11, 19 - 22.

8. Ms. Vermillion returned to inspect the premises in June of 1993. She took a photograph at that time, which reveals no cars parked in the photographed portion of the parking lot. The photograph also shows cracks in the pavement, and further, indicates that no landscaping or other activity was taking place in front of the building or at the shrubbery adjacent thereto. Intervenors' Ex. No. 3; Tr. p. 26.

9. Ms. Vermillion also observed weeds growing through the cracks in the pavement during her second visit. She did not see anyone else on the premises at that time. Tr. p. 27.

10. Ms. Vermillion's final inspection took place on September 16, 1993. She did not notice any equipment or personal property on the grounds during her inspection. Ms. Vermillion also did not see any cars in the parking lot at that time. However, she observed "more weeds" on the premises even though the grass had been cut. Ms. Vermillion further noticed that vines were growing in the exterior bushes and through about a dozen window sashes into the interior of the building. Intervenors' Ex. No. 3, p. 1; Tr. pp. 32 - 34, 40.

11. Ms. Vermillion gained access to the interior of the building during her final visit, which included examination of the entire first floor as well as the whole basement and loading dock area. Ms. Vermillion did not see anything while inspecting the loading dock. She did nonetheless detect a musty odor in the building, notice that the roof was leaking and recognize water stains on the carpet and ceiling. Tr. pp. 35, 36, 38 - 39.

12. Ms. Vermillion also did not see any furniture present in the first room she inspected. Nor did she view any storage containers, boxes, equipment or personal property therein. Tr. p. 36.

13. Ms. Vermillion further inspected other conference rooms or offices in the building. Except for some fixtures attached to the building, she did not see any storage containers, boxes, equipment, personal property or other debris in these locations during her inspection. Tr. p. 36.

14. Ms. Vermillion additionally inspected the kitchen area, but found only a sink and cabinets with no other furniture in that space. Tr. p. 37.

15. Ms. Vermillion did not see any furniture, storage boxes, equipment or personal property on the remainder of the first floor. She also did not see such equipment in the basement, except for what she thought might be old but free-standing washers, dryers or copier machines that were not plugged in. Tr. pp. 38- 39.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject premises from 1993 real estate taxes. Accordingly, under the reasoning given below, the Department's determination that said premises were not "actually and exclusively used for charitable or beneficent purposes..." within the meaning of 35 ILCS 205/19.7 during 1993 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by

the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 **ILCS** 205/1 et seq. The provisions of that statute that govern disposition of the instant proceeding are found in Section 205/19.7 In relevant part, that provision exempts the following from real estate taxation:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States ... when such property is actually and exclusively used or such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

35 **ILCS** 205/19.7.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate exemption pertains to "institutions of public charity." Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

In this case, I take administrative notice of the Department's determination dated November 6, 1980, which establishes that this applicant qualifies as an "institution of public charity" within the meaning of Section 205/19.7. Given that neither the applicant nor the intervenors have challenged this finding in the present case, and considering that the Department's denial rested *solely* on lack of exempt use, I shall leave same undisturbed and devote any remaining analysis to the use issue.

Analysis of that topic begins with recognition of the fundamental principle that the word "exclusively," when used in Section 205/19.7 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

Based on the fact that applicant vacated the subject premises in September of 1992, as well as the testimony of Intervenor's witness, Stephanie Vermillion at Tr. pp. 19 - 42, I conclude that the subject premises was primarily vacant during 1993. As such, the holding in Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (hereinafter "AMBC") establishes that said premises were not in exempt use during that time.

In AMBC, the court confronted the issue of whether a property owned by appellant's church could qualify for exemption even though it was boarded up and vacant during the years in question. The court held in the negative. In doing so, it relied on Skil Corporation v. Korzen, 32 Ill.2d 249 (1965) for the

proposition that evidence of intended use is not equivalent to, and therefore legally insufficient to sustain applicant's burden of establishing, actual exempt use. See also Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

Ms. Vermillion's testimony establishes that the present case is factually similiar to AMBC in that the subject premises was unkept and primarily vacant throughout 1993. While applicant attempts to alter this conclusion via the testimony of its General Counsel, James A. Flood, I find that both his testimony and certain exhibits admitted during the course thereof fall short of the clear and convincing standard necessary to establish exempt use.

Mr. Flood testified that applicant stored lighting fixtures, corporate records and other items in the building following the relocation of its corporate headquarters to Memphis, Tennessee. (Tr. p. 101). This testimony is in direct conflict with that of Ms. Vermillion, who indicated that she did not see any furniture, storage boxes, etc. in the building during her inspection. (Tr. pp. 36 - 39).

The evidence which applicant submitted in an attempt to resolve this conflict does not lessen the credibility or the persuasive impact of Ms. Vermillion's testimony. The inventory of items allegedly stored in the building (Applicant Ex. No. 16) was not a record kept in the ordinary course of applicant's business. Rather, it was prepared at the express direction of applicant's attorney for the sole purpose of being introduced at the evidentiary hearing. (Tr. p. 103). This document was also dated September 30, 1996, a date which fell well after the one on which applicant vacated the premises, September 1, 1992. Based on these deficiencies, I can not find that this exhibit, whether taken alone or in conjunction with Mr. Flood's testimony, rises to the level of clear and convincing evidence that is necessary to outweigh Ms. Vermillion's testimony and thereby establish exempt use.

The photographs submitted as Applicant Ex. Nos. 17A, 17B, and 17C likewise lack persuasive impact because they were taken by an employee of applicant's attorney rather than Mr. Flood himself. (Tr. p. 111). Thus, unlike Ms. Vermillion, who identified the picture that she took during her second inspection, (Intervenor's Ex. No. 2; Tr. p. 26), Mr. Flood was not a competent witness to authenticate the aforementioned photographs. In addition, although Mr. Flood testified that certain photographed items were stored in the building, he was unable to tell their exact location therein. (Tr. p. 112).

One might argue that the photographs should not be deprived of persuasive impact merely because of this deficiency. However, if one adds this defect to Mr. Flood's lack of competence and then compares these considerations to those associated with Ms. Vermillion's photograph and the testimony regarding her final inspection, (Tr. pp. 26, 34 - 40), it becomes apparent that other factors cause his testimony to become unpersuasive.

I also find it significant that Mr. Flood confirmed Ms. Vermillion's observations regarding leaks in the roof and cracks in the driveway. (Tr. pp. 26 - 27, 38 - 39, 102). These and other characteristics (i.e. weeds, vines, musty odor, lack of storage boxes, etc.), are most inconsistent with a property used "exclusively" for storage purposes. Instead, they are more descriptive of a property that was primarily vacant during the year in question.

Taken to their logical conclusion, these attributes suggest that applicant abandoned the property during 1993, save for its attempts to sell the premises via a realtor. Such efforts could, at the very least, be interpreted as establishing that some non-exempt commercial activity (showings to prospective buyers, etc.) took place on the subject premises in 1993.

This activity might provide evidence of an incidental use. However, it could also elucidate that the primary use might have been more attuned to the non-exempt sale of commercial real estate than applicant's utilization of a storage area. In either event, it seems nearly infeasible to deny that

applicant's sale efforts cast additional doubts on its already deficient documentary and testimonial evidence. For this reason, and because the rules cited *supra* at pp. 6 - 7 require that all remaining doubts² be resolved in favor of taxation, I conclude that applicant has failed to establish exempt use by clear and convincing evidence.

None of the case law cited by applicant alters the preceding conclusion. For example, Our Savior Lutheran Church v. Department of Revenue, 204 Ill. App.3d 1055 (5th Dist. 1990), (hereinafter "Our Savior"), is distinguishable from the present case in that there, one of the portions held to be exempt, a parsonage, was *not* "kept vacant and unused for an extended period of time." Our Savior, at 1060.

Here, the subject parcel was vacant and therefore unused (or, more accurately, unused but for non-exempt commercial sale attempts) during an extended period of time that commenced in September of 1992, continued throughout the entire 1993 assessment year, and ended only after the property was sold sometime in 1994. Thus, the court's holding, "[w]e do not think that *mere temporary* vacancy or lack of use of a portion of an otherwise exempt parcel renders that portion taxable," is inapplicable to the present facts. Our Savior at 1061. (emphasis added).

Mason District Hospital v. Tuttle, 61 Ill. App.3d 1034 (4th Dist. 1978) is likewise distinguishable. There, the county assessor made no assessment for taxes on that portion of the subject facility wherein appellant kept hospital records. Thus, exemption of that same portion was not before the court. Mason District Hospital at 1036. Rather, the court's analysis focused on other portions of the facility wherein physicians carried on their private practices.

². It should be noted that most, if not all, of the remaining doubts in the instant record arise from conflicts between Mr. Flood's testimony and that of Ms. Vermillion. Pursuant to the above-cited rules, said conflicts are hereby resolved in favor of Ms. Vermillion and the intervenors.

The court held these portions to be non-exempt largely because they were not primarily used for charitable purposes. Mason District Hospital at 1040. Given that this holding was based on the for-profit nature of the doctors' enterprise rather than vacancy, (*id.*), and considering that the court mentioned the storage area only in passing, I must conclude that applicant's reliance on Mason District Hospital is misplaced.

In summary, applicant has failed to sustain its burden of proof with respect to the issue of exempt use. Specifically, applicant has failed to clearly and convincingly establish that the subject parcel was used primarily for storage purposes in 1993. Instead, the deficient credibility of its documentary and testimonial evidence only establishes, at best, that storage uses, if any, were incidental to the primarily vacant condition of the property at that time. Therefore, the holding in AMBC, *supra*, provides controlling authority for affirming the Department's finding of non-exempt use.

WHEREFORE, for all of the above-stated reasons, it is my recommendation that Lake County Parcel Number 14-12-301-001 not be exempt from 1993 real estate taxes.

Date

Alan I. Marcus,
Administrative Law Judge